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In the United States District Court for the District of Columbia

H. C. 47–57

WILLIAM S. GIRARD, UNITED STATES ARMY SPECIALIST 3/C, PETITIONER

v.

CHARLES E. WILSON, SECRETARY OF DEFENSE; JOHN FOSTER DULLES, SECRETARY OF STATE; WILBUR M. BRUCKER, SECRETARY OF THE ARMY; GENERAL MAXWELL D. TAYLOR, HEAD JOINT CHIEFS OF STAFF, DEPARTMENT OF DEFENSE; MAJOR GENERAL W. H. MAGLIN, PROVOST MARSHAL GENERAL, UNITED STATES ARMY; GENERAL LYMAN LEMNITZER, COMMANDING GENERAL, FAR EAST COMMAND; RESPONDENTS

PETITION FOR WRIT OF HABEAS CORPUS

The petition of William S. Girard by his brother, Louis Girard, and his attorneys, Earl J. Carroll of San Francisco, California, Joseph S. Robinson of New York City, N. Y. and Dayton M. Harrington of Washington, D. C. upon information and belief, respectfully shows:

1. That the petitioner, William S. Girard, is a citizen of the United States and a resident and citizen of the State of Illinois. That he is now and has been since November 9, 1953, in the Military Service of the United States presently holding the rank of United States Army Specialist 3/C. Petitioner is currently held, pursuant to Military orders and by direction of the Military Authorities, in the territorial bounds of Japan and within the jurisdiction of the Far East Command of the United States Army. Peti-

tioner's last term of enlistment expired on February 12, 1957 on which date he was to be returned to the United States for separation from Military Service.

2. That heretofore and on or about January 30, 1957 the petitioner was arrested and thereafter held in confinement by the Military Authorities of the United States. The petitioner is presently held in such confinement by the said Military Authorities and at the instance of the United States Secretary of State for the purpose of being delivered over to the government of Japan for trial for an alleged offense over which that government of Japan has no jurisdiction, nor has the government of Japan any jurisdiction over the person of the petitioner.

3. Petitioner alleges that his detention by the Respondents for the purposes hereinabove alleged, is illegal and in violation of the Constitution and Laws of the United States as well as the Treaty Rights and obligations of the Government of the United States.

4. Petitioner alleges further that the reasons assigned by the Secretary of Defense and the Secretary of State in their joint statement of June 4, 1957 for his detention, are invalid in law and in violation of the fundamental, constitutional and legal rights of the petitioner and his continued detention by the respondents herein and their subordinates in command are without authority in law.

5. That the respondent herein, Hon. Charles E. Wilson, Secretary of Defense, is the highest ranking official of the military establishment of the United States and is by law and custom of the Military Service, empowered to issue orders to subordinates in command including the Military Personnel who hold the petitioner in confinement at United States Army Camp Whittington in the vicinity of Tokyo, Japan.

6. The respondent, John Foster Dulles, is the Secretary of State of the United States and as such is the highest ranking official of the State Department of the United States; the respondent, Wilber M. Brucker, is Secretary of the Army and as such is the highest ranking official of the Army of the United States; the respondent, General Maxwell D. Taylor, is the Head of the Joint Chiefs of Staff and as such is the highest ranking Military Official of the United States Military Establishment; the respondent, Major General W. H. Maglin, is Provost Marshal General of the Army of the United States and as such is the highest ranking Army Official having jurisdiction over the Military Police Force and over persons held in confinement by such Military Police and the respondent, General Lyman Lemnitzer, is the Commanding General of the Far East Command of the United States Military Establishment and as such is in command of all the United States Military Forces in the area wherein the petitioner is presently held in confinement. All the respondents herein named are by law and custom of the Military Service empowered to issue orders to subordinates in command and to all persons who now physically hold the petitioner in confinement and said respondents are duty bound to take such action as respects the petitioner as the Honorable Court may order and direct.

7. That the cause or pretense of the restraint of the petitioner is as hereinabove set forth and the imprisonment and restraint of the petitioner for the purposes of delivering him to a foreign government as set forth in the joint statement of the State and Defense Departments on June 4, 1957 is illegal and in violation of the petitioner's fundamental and constitutional rights as a citizen and resident of the United States serving in its Armed Forces.

8. Your petitioner further alleges that any treaty or agreement purported to authorize and or empower any official of the United States to hold, imprison or confine a citizen of the United States for the purpose of transferring him to a foreign jurisdiction under the circumstances set forth in this petition, is illegal and in violation of the Laws and Constitution of the United States.

9. No previous application has been made for the relief herein sought to any court or Judge.

WHEREFORE your petitioner prays that a Writ of Habeas Corpus issue directed to Charles E. Wilson, Secretary of Defense; John Foster Dulles, Secretary of State; Wilber M. Brucker, Secretary of the Army; General Maxwell D. Taylor, Head Joint Chiefs of Staff, Department of Defense; Major General W. H. Maglin, Provost Marshal General, United States Army; General Lyman Lemnitzer, Commanding General, Far East Command; and their subordinates in command, requiring them to forthwith have the body of petitioner, William S. Girard, together with the case of his imprisonment and restraint brought before the United States District Court for the District of Columbia or a Judge thereof, to inquire into the legality of his restraint, and

IT IS FURTHER PRAYED that your petitioner be granted such other further and equitable relief as this court may deem just and proper.

(Sgd.) Earl J. Carroll.
EARL J. CARROLL.

STATE OF NEW YORK,
County of New York, ss:

EARL J. CARROLL, being duly sworn deposes and says:

That he is one of the attorneys for the petitioner herein; that he has read and signed the foregoing petition; that he knows the contents thereof; that all matters therein contained are true except those matters stated on information and belief and that such matters he believes to be true.

(Sgd.) Earl J. Carroll.
EARL J. CARROLL.

Sworn to before me this 5th day of June 1957.

EARL J. CARROLL,
and JOSEPH S. ROBINSON,
745 Fifth Avenue, New York 22, N. Y.
Murray Hill 8-1067,
DAYTON M. HARRINGTON,
454 Washington Building, Washington, D. C.,
Republic 7-7137,
Attorneys for Petitioner:

In the United States District Court for the District of Columbia

H. C. 47-57

WILLIAM S. GIRARD, PETITIONER

v.

CHARLES E. WILSON, ET AL., RESPONDENTS

RETURN AND ANSWER TO THE RULE TO SHOW CAUSE

Come now the respondents by their attorney, the United States Attorney, and as a return and answer to the rule to show cause respectfully represent to the Court the following:

1. The petitioner William S. Girard, R. A. 16452809, is a specialist 3rd class in the Regular Army of the United States assigned to Company F, 8th Cavalry

Regiment, at Camp Whittington, Honshu, Japan, having re-enlisted while in Japan on October 28, 1954, for a period of three years. This term of enlistment is to expire on October 27, 1957.

2. On January 30, 1957, petitioner, while on a firing range known as Camp Weir Range in Japan, shot and killed a Japanese woman by firing an expended cartridge case from a grenade launcher which cartridge penetrated her back and caused her death.[1]

3. The above constitutes an offense within the concurrent jurisdiction of both the United States and Japan, consequently coming within the provisions of the Protocol to amend Article XVII of the Administrative Agreement entered into between the United States and Japan pursuant to Article III of the Security Treaty between the governments of these two countries. The above-mentioned Protocol and agreements have been held to be valid and constitutional. *May* v. *Wilson*, C. A. No. 128–56, D. C. D. C. Also *Cozart* v. *Wilson*, 98 U. S. App. D. C. 437, 236 F. 2d 732 (1956). They are essential to the national defense of the United States and a valid exercise of the sovereign power of the United States in the conduct of foreign affairs.

4. Under applicable treaty arrangements, the exercise of jurisdiction by the United States is never mandatory but is discretionary with the United States. The United States has decided not to exercise jurisdiction in this case, and has entered into a valid and binding agreement with Japanese authorities to that effect.

5. Petitioner is not now nor was he at the time of

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[1] There are attached hereto and made a part hereof Government's exhibits 1 through ——. [Not reproduced.]

the filing of this petition in the custody of the United States within the meaning of 28 United States Code 2241. He is and has been on a normal duty status restricted by military orders to the military base of Camp Whittington. The remedy of habeas corpus does not lie under such circumstances. *Wales* v. *Whitney*, 114 U. S. 564 (1885).

The respondents call this to the Court's attention but do not press the point and are prepared to treat the petition as an application for equitable and/or declaratory relief.

6. The petitioner is not now nor was he at the time of the filing of the petition herein within the territorial limits of the District of Columbia. Therefore the United States District Court for the District of Columbia has no jurisdiction to consider his application for a writ of habeas corpus. *Ahrens* v. *Clark*, 335 U. S. 188 (1948). While this point has been decided against the respondents in *Cozart* v. *Wilson*, *supra*, respondents wish to preserve this point.

7. The decision by the United States not to exercise jurisdiction in this case is a discretionary decision of the Executive Branch in the conduct of foreign affairs and the military defense of the United States, and as such is a political decision not subject to judicial review. There has been no abuse of discretion.

CONCLUSION

For the reasons set forth herein together with the attached memorandum [not reproduced] which is by reference made a part hereof, respondents respect-

fully move this Court to dismiss the petition for writ of habeas corpus and to discharge the rule to show cause.

(Sgd) _____
OLIVER GASCH,
United States Attorney.

(Sgd) _____
E. RILEY CASEY,
Assistant United States Attorney.

(Sgd) _____
HAROLD H. GREENE,
Assistant United States Attorney
Counsel for defendant.

In the United States District Court for the District of Columbia

Habeas Corpus 47–57

WILLIAM S. GIRARD, PETITIONER

v.

CHARLES E. WILSON, ET AL., RESPONDENTS

REPLY TO RETURN AND ANSWER TO THE RULE TO SHOW CAUSE

Come now the petitioner by his attorneys and as a reply to the return and answer to the rule to show cause, upon information and belief, respectfully represent to the Court the following:

1. The petitioner William S. Girard, R. A. 6452809, is a specialist 3rd Class in the Regular Army of the United States assigned to Company F, 8th Cavalry Regiment, at Camp Whittington, Honshu, Japan, having re-enlisted while in Japan on October 28, 1954.

On February 12, 1957, he was to be returned to the United States.

2. Camp Weir Range is a maneuver area reserved to the United States for its exclusive use by the United States Armed Forces. The United States has consented to occasional use thereof by Japanese authorities provided that such use would not be harmful to the purposes for which said facilities and area were used by the United States Armed Forces, and provided further that it continued to be an area within the exclusive jurisdiction of the United States.

3. On January 30, 1957, while such maneuver area was being used exclusively by the Armed Forces of the United States, the petitioner was stationed there and by the lawful command of his superior officer assigned to guard duty thereon to guard property of the United States. While in such area and in performance of such guard duty he discharged his grenade launcher in performance of his official assigned duty. At about said time a number of Japanese nationals were trespassing on said area for the purpose of stealing property of the United States Government which petitioner was assigned to guard. A Japanese national was allegedly injured by act of the petitioner resulting in death.

4. The facts above stated constitute no offense against the laws of Japan and no offense against the laws of the United States. Nevertheless, the petitioner has been indicted by a Japanese Court and is presently being held in the custody and under the control of United States military authorities in Japan to be handed over for trial before a Japanese Court, to which Court the Military and State Department officials have agreed to hand over petitioner.

5. No valid treaty exists between the United States and Japan providing for the delivery of the petitioner

to Japanese authorities for trial of the offense alleged or for any other purpose.

6. Petitioner is now, and was at all times since the filing of this petition, in the custody of the respondents and their subordinates in command on the military base of Camp Whittington, Japan, to which base he is restricted, and from which base he may not depart.

7. The detention of petitioner is unlawful and the decision to deliver petitioner to a foreign government is without authority in law.

8. Other than herein above pleaded, petitioner denies each and every allegation of the return and answer to the rule to show cause.

Wherefore the petitioner prays that the writ of habeas corpus requested in the petition in support of the rule to show cause be granted.

(Sgd)_____

EARL J. CARROLL.